

EB 04-381

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUN 23 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\_\_\_\_\_  
FLORIDA CABLE  
TELECOMMUNICATIONS  
ASSOCIATION; COX COMMUNICATIONS  
GULF COAST, LLC, *et al.*

Complainants,

P.A. No. 00-004

v.

GULF POWER COMPANY,

RECEIVED

JUN 24 2003

Chief, MDRD  
Enforcement Bureau

Respondent.  
\_\_\_\_\_

To: Enforcement Bureau

GULF POWER COMPANY'S  
PETITION FOR RECONSIDERATION AND  
REQUEST FOR EVIDENTIARY HEARING

Dated: June 23, 2003

## TABLE OF CONTENTS

<b>Summary</b> .....	i
<b>Procedural History</b> .....	2
<b>The Related <i>ACTA v. APCo</i> Proceeding</b> .....	3
<b>The Bureau Order Should Be Reversed</b> .....	5
1. The Retroactive Application of the Eleventh Circuit’s Novel Standard Violates Well-Established Legal Principles.....	5
2. The New Standard Is a Departure from FCC Policies and Practices.....	7
3. The Eleventh Circuit’s Standard Is Unlawful.....	9
<b>Request for Evidentiary Hearing</b> .....	10
<b>Conclusion</b> .....	13
<b>Certificate of Service</b> .....	14

### Summary

This Petition for Reconsideration and Request for Evidentiary Hearing asks the Bureau to (1) reconsider the May 13, 2003 Order, and (2) allow Gulf Power an opportunity to meet the Eleventh Circuit's new standard. The pleadings and evidence in this proceeding closed on August 29, 2000. In November 2002, the Eleventh Circuit released its opinion in the related *Alabama Power Company v. FCC* case. That opinion announced a new standard that a pole owner must meet before it is entitled to compensation at any amount exceeding marginal cost. The Bureau applied this novel standard even though the standard did not exist at the time Gulf Power submitted its evidence in this proceeding. Such retroactive application of a new standard violates well-established legal principles. Furthermore, the Eleventh Circuit's standard, which imposes a per-pole evidentiary burden upon Gulf Power, conflicts with the FCC's practice of relying upon numerous presumptions in resolving pole attachment disputes. Additionally, the Eleventh Circuit's standard, which is based on the Court's creation of a new category of tangible private property (*i.e.*, "nonrivalrous" property), is simply unlawful. If the Eleventh Circuit's new standard ultimately is to be applied in this proceeding, at a minimum, Gulf Power should be given an opportunity to present evidence specifically targeted to meet the standard.

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

JUN 23 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

---

**FLORIDA CABLE  
TELECOMMUNICATIONS  
ASSOCIATION; COX COMMUNICATIONS  
GULF COAST, LLC, *et al.***

**Complainants,**

**P.A. No. 00-004**

**v.**

**GULF POWER COMPANY,**

**Respondent.**

---

**To: Enforcement Bureau**

**GULF POWER COMPANY'S  
PETITION FOR RECONSIDERATION AND  
REQUEST FOR EVIDENTIARY HEARING**

Pursuant to Rule 1.106 of the Rules of Practice and Procedure of the Federal Communications Commission ("FCC") (47 C.F.R. § 1.106), Respondent Gulf Power Company ("Gulf Power") files this Petition for Reconsideration of the Memorandum Opinion and Order released by the Enforcement Bureau ("Bureau") on May 13, 2003 ("Order"). The Order granted the pole attachment complaint filed in this proceeding. The Bureau based its Order upon a legal standard articulated for the first time in the November 2002 opinion in *Alabama Power Company v. FCC*, 311 F.3d 1357 (11<sup>th</sup> Cir. 2002) ("*APCo v. FCC*").

This Petition for Reconsideration and Request for Evidentiary Hearing should be granted, and the Order ultimately reversed, because the Order is factually and legally erroneous, and it is based on a legal and evidentiary standard that was articulated for the first time over two years after the three-pleading cycle in this case was completed. Even if it is lawful and appropriate for the standard first set forth in *APCo v. FCC* to be applied in this case, the FCC should wait for it to become a final rule. In the event it becomes a final rule, Gulf Power should be given an opportunity to meet the new standard. Retroactive application of the Eleventh Circuit's standard - a standard heretofore unheard of in any physical takings case - to a record that has been shelved for more than two years is both unfair and unlawful.

#### **Procedural History**

On July 10, 2000, Complainants filed their pole attachment complaint. The complaint challenged (1) Gulf Power's exercise of its express contractual right to terminate existing pole attachment agreements, and (2) its annual just compensation-based mandatory access charge of \$38.06 per pole. Complainants also filed a Petition for Temporary Stay to prevent Gulf Power from imposing its just compensation price or from removing attachments upon non-payment. Gulf Power responded to the Complainants' pleadings. Complainants submitted a Reply on August 29, 2000, which closed the pleadings and evidence in this proceeding.

On May 13, 2003 -- almost three years after the close of pleadings and evidence -- the Bureau's released its Order. Curiously, the Order stated, "Gulf Power has had numerous and adequate opportunities to supplement the record . . . . Having failed to do so, . . . the record is now closed." Order, ¶ 1, n.2. The Bureau did not explain what these "numerous and adequate opportunities" were. If the record remained open, Gulf Power certainly was not aware of that fact. The very procedural rules governing this proceeding provide that, upon the filing of a

complainant's reply, "no other filing and no motions other than for extension of time will be considered unless authorized by the Commission." 47 C.F.R. § 1.1407(a).<sup>1</sup>

The Bureau's Order was released on May 13, 2003. On June 9, 2003, the FCC granted Gulf Power's unopposed request for an extension of time to file a petition for reconsideration of the May 13 Order.

### **The Related ACTA v. APCo Proceeding**

Concurrent with the proceeding against Gulf Power, a nearly identical proceeding against Alabama Power Company was moving forward. On September 8, 2000, the Cable Bureau issued an order granting the complaint filed by the Alabama Cable Telecommunications Association ("ACTA").<sup>2</sup> In the September 8, 2000 Order, the Cable Bureau rejected Alabama Power's attempt to exercise its express contractual right to terminate its agreements with cable and telecom attaching entities and prohibited Alabama Power from charging its mandatory access, just compensation-based price. Alabama Power filed an Application for Review of the order with the FCC. Believing that review by the full Commission was futile, Alabama Power also filed a Petition for Review of the order with the Eleventh Circuit. On May 25, 2001, the full Commission affirmed the Cable Bureau's order.<sup>3</sup> Alabama Power then petitioned the Eleventh Circuit for review of the full Commission's order, and the two Eleventh Circuit petitions were consolidated.

---

<sup>1</sup> The Commission has not shown a willingness to allow supplemental evidence. See e.g., *Teleport Communications Atlanta, Inc. v. Georgia Power Company*, 17 FCC Rcd 19859, ¶ 22 (2002) (upholding Bureau's decision to reject supplemental evidence and to deny request for evidentiary hearing).

<sup>2</sup> *Alabama Cable Telecommunications Association, et al. v. Alabama Power Company* ("ACTA v. APCo"), 15 FCC Rcd 17346 (2000).

<sup>3</sup> *ACTA v. APCo*, 16 FCC Rcd 12209 (2001) ("May 25 Order").

On November 14, 2002, the Eleventh Circuit issued an opinion upholding the May 25 Order, but on grounds substantially different from those articulated by either the Cable Bureau or the Commission. *APCo v. FCC*, 311 F.3d 1357 (11<sup>th</sup> Cir. 2002). The Eleventh Circuit created an entirely new legal standard by holding that certain types of property (such as a utility's pole space) are "nonrivalrous" -- a concept not found in any previously published takings case. 311 F.3d at 1369. Under the Eleventh Circuit's analysis, just compensation for a utility's pole space (labeled by the Court as "nonrivalrous" property) will never exceed marginal cost unless the pole owner can meet a new and heightened evidentiary burden:

[B]efore a power company can seek compensation above marginal cost, it must show with regard to each pole that (1) the pole is at full capacity and (2) either (a) another buyer of the space is waiting in the wings or (b) the power company is able to put the space to a higher-valued use with its own operations.

*Id.*, at 1370.

Alabama Power filed Petitions for Rehearing and Rehearing En Banc; both petitions were denied. On February 4, 2003, the Eleventh Circuit issued an order staying the issuance of the mandate. Alabama Power timely filed a Petition for a Writ of Certiorari to the Supreme Court on April 4, 2003 (Case No. 02-1474). That Petition for Certiorari remains pending.<sup>4</sup>

---

<sup>4</sup> While the outcome of the potential Supreme Court consideration remains uncertain, the debate sparked by the Eleventh Circuit's novel holding is not. See Daniel F. Spulber and Christopher S. Yoo, *Access to Networks: Economic and Constitutional Connections*, 88 Cornell L. Rev. 885 (May, 2003). According to Spulber and Yoo, "[t]he FCC's arguments are unconvincing" and, as Alabama Power, Gulf Power and other electric utilities have maintained, the proper compensation for compelled access to utility networks is "market value." *Id.*, at 1000; see generally, at 891-92, 913-14, 986, 1000-01. Concerning the Eleventh Circuit's "nonrivalrous" analysis, Spulber and Yoo explain: "It simply does not follow that a person who is not currently using a particular piece of property will give it away for free." *Id.*, at 1001.

## **The Bureau Order Should Be Reversed**

### **A. The Retroactive Application of the Eleventh Circuit's Novel Standard Violates Well-Established Legal Principles.**

In contrast to the Cable Bureau's speedy resolution of the complaint against Alabama Power, this proceeding had been languishing in the FCC for nearly three years when the Enforcement Bureau released its May 13, 2003 Order. The May 13 Order stated that "Gulf Power fails utterly to justify its proposed annual pole attachment rate . . . using the Cable Formula" and held that Gulf Power was not entitled to receive any amount above marginal cost because it "has submitted no evidence in this proceeding that would satisfy the test articulated by the Eleventh Circuit." Order, ¶¶ 17, 15. Though Gulf Power disputes the Bureau's characterization of its evidence, Gulf Power concedes that its submissions were not targeted to meet a "test" that did not exist until over two years after the pleadings closed.

The May 13 Order faulted Gulf Power for failing to meet an evidentiary burden that did not exist at the time it submitted its proof. *Id.* Notwithstanding a stay of the mandate in the *APCo v. FCC* case, without awaiting a final resolution of that case, without providing Gulf Power notice of its intent to apply the new standard, and without providing Gulf Power an opportunity to meet the new evidentiary standard, the Bureau denied Gulf Power the relief it sought based principally (if not exclusively) on the Eleventh Circuit's new standard.<sup>5</sup> The Bureau's actions are unlawful and unfair.

---

<sup>5</sup> The Commission must be consistent in application of its procedures. *See, e.g., Vargas v. INS*, 938 F.2d 358, 362 (2d Cir. 1991) ("[I]nconsistent application of agency standards to similar situations lacks rationality and is arbitrary."). In *ACTA v. APCo*, the full Commission refused to apply the Eleventh Circuit's holding in *Gulf Power Company v. FCC*, 208 F.2d 1263 (11<sup>th</sup> Cir. 2000), explaining that "further litigation in this matter is in progress," and the decision "was not final." *See* May 25 Order, ¶ 9. The Eleventh Circuit stayed the issuance of the mandate in the *APCo v. FCC* case on February 4, 2003. Yet, the Bureau issued its May 13 Order in full reliance on the opinion.

Gulf Power submitted ample evidence that was designed to meet the burden of proof in settled just compensation takings cases. The new standard articulated by the Eleventh Circuit substantially changed the nature (and quantity) of evidence required of utilities in such cases. The Bureau should not, therefore, have applied the new standard retroactively. *See, e.g., Heckler v. Community Health Services, Inc.*, 467 U.S. 51, 61, n.12 (1984) (“[A]n administrative agency may not apply a new rule retroactively when to do so would unduly intrude upon reasonable reliance interests.”); *Lehman v. Burnley*, 866 F.2d 33, 37 (2d Cir. 1989) (quoting *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1998)) (“Retroactivity is not favored in the law. . . . Even where some substantial justification for retroactive [application of an agency ruling] is presented, courts should be reluctant to find such authority [to apply rulings retroactively] absent an express statutory grant.”).

Applying the Eleventh’s Circuit’s new rule changed the “nature of the burden of proof so that additional facts of a different kind [are now] relevant for the first time.” *Hatch v. FERC*, 654 F.2d 825, 835 (D.C. Cir. 1981). In the interest of fairness, the Bureau should have notified Gulf Power that it intended to impose the new standard and offered Gulf Power the opportunity to submit evidence bearing on that standard. *Puerto Rico Aqueduct and Sewer Authority v. EPA*, 35 F.3d 600, 607 (1<sup>st</sup> Cir. 1994) (“As a general matter, when an adjudicating agency retroactively applies a new legal standard that significantly alters the rules of the game, the agency is obligated to give litigants proper notice and a meaningful opportunity to adjust.”); *Hatch*, 654 F.2d at 835 (“Court have uniformly held that for an agency to . . . apply [a standard of law] retroactively in an adjudicatory setting, the party before the agency must be given notice and an opportunity to introduce evidence bearing on the new standard.”). The Bureau did not allow

Gulf Power an opportunity to introduce evidence specifically targeted to meet the new standard in violation of principles of law and fairness.

B. The New Standard Is a Departure from FCC Policies and Practices.

It is contradictory and unreasonable for the FCC to impose a standard that requires Gulf Power to present evidence “with regard to each pole” in order to meet the Eleventh Circuit’s two-part test when (1) Congress never intended to impose such a burden, (2) the FCC’s regulations do not contemplate such a per-pole burden, and (3) the FCC itself relies heavily on presumptions about a utility’s poles. Order, ¶ 15. The Bureau’s imposition of the new standard is particularly egregious given that the FCC never required a per-pole showing before the Order was issued, and considering that a per-pole showing was never intended for the resolution of pole attachment arrangements.

The legislative history of the Pole Attachment Act illustrates the conflict between the new standard and Congress’ intended purpose. Congress directed the FCC to “institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation.” S. Rep. No. 95-234, at 21, *reprinted in*, 1978 U.S.C.C.A.N 129. This undisputed congressional command is entirely at odds with an evidentiary burden that requires utilities to establish *anything* “with regard to each pole.”

The FCC’s rules pertaining to pole attachment rates rely heavily on the use of presumptions that specifically avoid the need for evidence “with regard to each pole.” Under the FCC’s rules, presumptions governing the specifications of utilities’ poles inhere every aspect of the cable and telecom rate formulas. For example, the formulas are based on the presumptions that poles are an average of 37.5 feet in height, that poles have a minimum ground clearance of

18 feet, that there are 13.5 feet of usable space on a pole, that attaching entities occupy one foot of space on a pole, and that entities attaching in conduit use one-half of the duct. *See In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, at ¶ 48-52 and ¶ 95 (2001); *see also In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777, at ¶¶ 83-91 and ¶ 115 (1998). Indeed, the FCC's presumptions demonstrate that Gulf Power's pole space is limited and therefore "rivalrous." Applying the presumptions, Gulf Power has space for *one* attaching entity. There are at least five Complainants in this case. Obviously, Gulf Power's poles are "crowded."

In justifying its use of presumptions in both attachment formulas, the FCC explained

The use of presumptions provides a level of predictability and efficiency in calculating the appropriate rate. Fairness is preserved because the presumptions may be overcome through contrary evidence. We seek to maintain predictability, efficiency and fairness in determining the costs [associated with] a pole. In the Notice, the Commission stated that *a pole-by-pole inventory* of [certain specifications] on each pole *would be too costly*.

13 FCC Rcd 6777, at ¶ 74 (emphasis added).

The May 13 Order abandoned this long-standing practice of relying on presumptions by imposing upon Gulf Power an evidentiary burden that mandates factual evidence as to *each pole*. Order, ¶ 15. The FCC cannot have it both ways. It may not remain devoted to its preference for presumptions in establishing rates, yet summarily reject a utility's just compensation evidence for failing to provide information as to *each pole*. Such conduct constitutes arbitrary and capricious decision making and runs afoul of the legal precedents requiring consistency and fairness in administrative agency actions. *See, e.g., Vargas v. INS*, 938 F.2d 358, 362 (2d Cir. 1991) ("Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary.").

C. The Eleventh Circuit's Standard Is Unlawful.

Aside from the procedural and legal errors outlined in parts A and B, *supra*, the Bureau's reliance on the Eleventh Circuit's new standard cannot be sustained because the standard has no basis in just compensation jurisprudence. The Eleventh Circuit's opinion in *APCo v. FCC* is entirely at odds with the takings decisions of the Supreme Court. The FCC should respect Supreme Court authority, recognize the erroneous nature of Eleventh Circuit's analysis, and apply the just compensation principles as articulated by the Supreme Court. The Eleventh Circuit's holding that a utility's tangible private property (space on a utility pole) is "nonrivalrous" -- meaning that "use by one entity does not necessarily diminish the use and enjoyment of others" -- is inconsistent with law, logic, and empirical observation. *APCo v. FCC*, 311 F.3d at 1369. Space on a utility pole is physical, tangible property that, once taken, is lost to the owner. As such, it cannot be classified as "nonrivalrous."

The Eleventh Circuit failed to reconcile its opinion with Supreme Court precedent stating that just compensation is the "full monetary equivalent of the property taken." *United States v. Reynolds*, 397 U.S. 14, 16 (1970). The Court ignored the "market value" standard for determining the value of the property taken (*Palazzolo v. Rhode Island*, 533 U.S. 606, 625 (2001)) and rejected the long-standing use of a "hypothetical willing buyer/willing seller" price to measure just compensation (*United States v. Miller*, 317 U.S. 369, 374 (1943)). Also, the Court in *APCo v. FCC* ignored well-established proxies used to measure just compensation where no market for the property exists. *United States v. 564.54 Acres of Land in Monroe and Pike Counties, Penn.*, 441 U.S. 506, 512 (1979).<sup>6</sup>

---

<sup>6</sup> See also Spulber and Yoo, *supra*, at 901-903.

The Eleventh Circuit labeled utility pole space as “nonrivalrous” based on its presumption that the “use by one entity does not necessarily diminish the use and enjoyment of others.” *APCo v. FCC*, 311 F.3d at 1369. While this may, indeed, be true with respect to the hypothetical one-million foot utility pole that the Eleventh Circuit created (311 F.3d at 1369), it is not true for Gulf Power’s poles. Indeed, the Bureau presumes that Gulf Power’s poles are 37.5 feet tall, with only one and one-half feet of space usable for cable and telecommunication allotments. Order, ¶ 16; *see also* pp. 10-11, *supra*. The FCC cannot both adhere to its own presumptions and apply a rule based on the premise of unlimited and infinite pole space. The FCC should recognize the Eleventh Circuit’s error and apply Supreme Court precedent to arrive at a decision that is consistent with long-standing just compensation authorities.

#### **Request for Evidentiary Hearing**

The Bureau retroactively imposed a new rule and evidentiary standard upon Gulf Power, without affording Gulf Power an opportunity to present evidence to meet the new standard. Gulf Power respectfully requests that the Bureau set this proceeding for a full evidentiary hearing to allow it an opportunity to present evidence specifically targeted to meet the new standard. Putting aside for a moment its non-final status, if Gulf Power is required to meet a new standard in order to justify a pole attachment charge exceeding marginal cost, at a bare minimum, it should be given a chance to do so.

The granting of such a request is expressly authorized by the FCC’s rules concerning petitions for reconsideration as well as its pole attachment regulations. Rule 1.106(d)(2) states that a petition for reconsideration “may request that additional findings of fact and conclusions of law be made.” 47 C.F.R. § 1.106(d)(2). Although petitions for reconsideration may not rely on facts not previously presented to the Bureau (Rule 1.106(c)), such facts may be raised if they

relate to “circumstances which have changed since the last opportunity to present such matters.” Rule 1.106(c)(1) and (b)(2)(i). The Eleventh Circuit’s new evidentiary standard presents a significantly “changed circumstance” to merit the Bureau’s allowance of additional evidence on reconsideration, particularly since the existing record evidence was submitted nearly three years ago and was not specifically targeted to meet the new standard.

In addition to these generally applicable rules, in its consideration of pole attachment complaints, the FCC may request parties to “make additional filings or provide additional information,” and it may “order evidentiary procedures upon any issues it finds to have been raised by the filings.” 47 C.F.R. § 1.1409(a). Accordingly, it is procedurally appropriate and within the Bureau’s authority to set this proceeding for an evidentiary hearing, even at this stage. *See, e.g., In re Meadville Master Antenna, Inc.*, 36 FCC2d 591, 593 (1971) (ordering evidentiary hearing where there were “substantial and material issues of fact which require a hearing for their resolution”); *In re Applications of Westall Samoa, Inc.*, 13 FCC Rcd 6342, 6344-45 (1998) (discussing the FCC’s jurisdiction to order evidentiary hearings).

Gulf Power requests an evidentiary hearing in order to submit additional evidence specifically targeted to proving, among other things, that (1) its poles are crowded or full; (2) there are other ready and willing buyers for space on Gulf Power’s poles; (3) Gulf Power’s pole space can be put to higher-valued uses; (4) Gulf Power has identifiable lost opportunities; and (5) there is an active willing buyer/willing seller market for network access on Gulf Power’s poles. Specific evidence that Gulf Power requests the opportunity to present includes, but is not limited to, the following:

- (1) Photographic and engineering evidence regarding crowding on Gulf Power’s poles, *see, e.g.*, Tab A;

- (2) Documentary evidence (agreements, invoicing, other accounting evidence) showing that other attaching entities (including entities that are and are not protected by the Pole Attachment Act) are voluntarily paying an annual pole attachment charge of \$38.06 or higher, *see, e.g.*, Tab B;
- (3) Testimony of inquiries to Gulf Power regarding possible pole attachment arrangements;
- (4) Testimony and documentary evidence of the value to Gulf Power in excluding attachers at a regulated rate;
- (5) Testimony and documentary evidence concerning Gulf Power's lost opportunities and the rivalrous nature of its pole space, *see e.g.*, Tab C.<sup>7</sup>

Even assuming the Bureau's retroactive application of the Eleventh Circuit's newly created evidentiary burden to Gulf Power's nearly three-year-old evidence was not unlawful, the Bureau at least should give Gulf Power the opportunity to present evidence that is specifically targeted to meet the Eleventh Circuit's test.

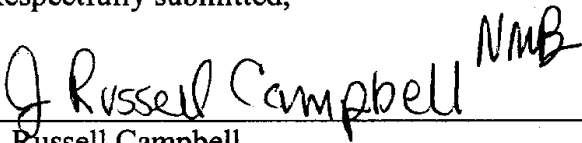
---

<sup>7</sup> Given the short time period Gulf Power had to prepare and submit this Petition for Reconsideration and Request for Evidentiary Hearing, the entirety of its evidence could not be assembled to be submitted with this filing. This list is intended to serve as a proffer of the type of evidence that Gulf Power would submit at an evidentiary hearing through both direct and cross-examination of appropriate witnesses.

**Conclusion**

WHEREFORE, Respondent Gulf Power Company respectfully requests that the Enforcement Bureau (1) reconsider the findings and conclusions set forth in the May 13, 2003 Order and (2) set this proceeding for a full evidentiary hearing to allow Gulf Power a full opportunity to present evidence specifically targeted to meet the new Eleventh Circuit standard.

Respectfully submitted,



J. Russell Campbell  
Eric B. Langley  
Jennifer M. Buettner  
Balch & Bingham LLP  
1710 Sixth Avenue North  
Birmingham, Alabama 35203  
Phone: 205-251-8100  
Fax: 205-226-8798

Ralph A. Peterson  
Beggs & Lane LLP  
501 Commendancia Street (32502-5915)  
P.O. Box 12950  
Pensacola, Florida 32591-2950  
Phone: (850) 432-2451  
Fax: (850) 850-469-3330

## CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon the following on this the 23<sup>rd</sup> day of June, 2003:

Paul Glist  
J.D. Thomas  
Cole, Raywid & Braverman  
1919 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006

David H. Solomon  
Chief, Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Linda Blair  
Deputy Bureau Chief  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Alex Star  
Chief, Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Lisa B. Griffin  
Deputy Chief, Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Federal Energy Regulatory Commission  
Docket Room 1A-209  
888 First Street, N.E.  
Washington, D.C. 20426

---

Of Counsel